

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

JANE DOES 1-9,

Plaintiffs,

v.

COLLINS MURPHY, LIMESTONE
COLLEGE, MG FREESITES, LTD., d/b/a
PORNHUB.COM, and HAMMY MEDIA
LTD. d/b/a XHAMSTER.COM,

Defendants.

CASE NO. 7:20-CV-00947-JD

**DEFENDANT MG FREESITES, LTD.’S REQUEST FOR LEAVE TO FILE SUR-REPLY
AND SUR-REPLY IN RESPONSE TO PLAINTIFFS’ REPLY IN SUPPORT OF
RULE 59(b) (sic) MOTION TO ALTER OR AMEND JUDGMENT**

While the Local Rules of this Court do not make provision for sur-replies, courts in this Circuit “generally only allow sur-replies when fairness dictates that a party be provided the opportunity to address an issue that was raised for the first time in a responsive briefing.” *Rice v. Anderson Cty.*, No. CV 0:19-851-SAL-PJG, 2021 WL 2435725, at *1 (D.S.C. June 15, 2021), *report and recommendation adopted*, No. 0:19-CV-851-SAL, 2022 WL 18769 (D.S.C. Jan. 3, 2022). Plaintiffs’ recently filed Reply prompts this exact circumstance and justifies the following sur-reply.

Specifically, the following are misstatements regarding Defendant MG Freesites, LTD.’s (“MG Freesites”) responses to Plaintiffs’ past requests for information:

- **Plaintiffs incorrectly state “Mindgeek did not answer[] until September 3, 2021”**
Plaintiffs’ first set of discovery requests dated January 14, 2021, i.e. eight months overdue. Reply 4. This is not true. MG Freesites timely responded to Plaintiffs’ first set

of requests on March 18, 2021, and included affirmative answers to requests where possible. *See Exhibit A to Plaintiffs' Reply.* At that time, many of Plaintiffs' requests were impossible to address because they sought documents specifically relating to each of the Plaintiffs and videos in this case – but counsel had not yet identified the anonymous “Jane Doe” Plaintiffs or the videos at issue. Plaintiffs ultimately shared that information on or about August 27, 2021, and MG Freesites quickly provided a supplemental production with documents on September 3, 2021. This production was not, as Plaintiffs incorrectly state, delayed or untimely.

- **Plaintiffs incorrectly state “Plaintiffs served Mindgeek with a second set of discovery on October 28, 2021 and have still not received any responses.” Reply 4.** This is also not true. MG Freesites timely responded to Plaintiffs’ second set of discovery requests on November 29, 2021. *See Exhibit A* (November 29, 2021 Transmittal Email). That response included the production of substantive information, a link to further responsive documents (located online), and again, proposals to meet and confer that have gone unanswered.
- **Plaintiffs acknowledge MG Freesites’ counsel agreed to identify “MG Freesites Ltd. [as] the correct party” at the outset of this case but claim “Plaintiffs have since learned that the information that they relied upon from Defendants was inaccurate[.]”** This representation implies some new information has been uncovered as part of discovery in this case. Not so. MG Freesites has repeatedly asked Plaintiffs’ counsel to identify or explain what information they believe is inaccurate, and Plaintiffs’ counsel has declined to

do so, and has not produced a single document or other piece of evidence concerning the results of its purported “investigation.”¹

While mindful that a sur-reply ought not re-litigate matters and issues already fully submitted to the Court, MG Freesites respectfully submits that “fairness [also] dictates” leave to also speak (briefly) to Plaintiffs’ references on Reply to a 2020 New York Times article as well as “bodies in the Hudson River[.]” Reply 2. With regard to the former, Plaintiff apparently concedes that the 2020 article is a primary basis for their most recent proposed amendment, but does not account for the year it took for them to amend on that basis. The propriety of the fourth amended complaint, filed days after the article, is no longer in issue. With regard to the latter, MG Freesites respectfully submits this kind of grotesque imagery is counterproductive and prejudicial, and urges the Court to disregard it.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs’ Rule 59 Motion to alter or amend this Court’s March 21, 2022 Order.

DATED: April 25, 2022

Columbia, South Carolina

TURNER, PADGET, GRAHAM AND LANEY, P.A.

By: /s/ Mark B. Goddard

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¹ On this issue, as with the others discussed above, MG Freesites proposed to meet and confer with the plaintiffs’ attorneys regarding the responses, but those proposals were either declined or received no response.

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